VIRGINIA BOARD OF DENTISTRY

Regulatory-Legislative Committee

September 10, 2010 Agenda

Department of Health Professions

Perimeter Center - 9960 Mayland Drive, 2nd Floor Conference Center

Richmond, Virginia 23233

TIME		PAGE
9:00 a.m.	**Call to Order —Myra Howard, Chair**	
	Public Comment	
	Approval of Minutes - January 22, 2010	**P1-P3**
	Status Report on Regulatory Actions	
	Dental Assistant II Regulations	
	○ **Educational requirements for pulp capping procedures**	**P4-P5**
	Periodic Review of Regulations	
	○ **Comments on the NOIRA**	**P6-P9**
	○ **VDA Recommendation**	**P10**
	○ **Dental Labs – disclosure of the materials used**	**P11-P60**
	○ **Advertising Workgroup Recommendations**	**P61-P64**
	Schedule Next Meeting	

Adjourn

VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE
JANUARY 22, 2010

TIME AND PLACE: The meeting of the Regulatory/Legislative Committee of the Board of Dentistry was called to order at 1:25 p.m. on January 22, 2010 in Board Room 2, Department of Health Professions, 9960 Mayland Drive, Suite 201, Richmond, Virginia.

PRESIDING: Myra Howard, Chair

MEMBERS PRESENT: Jacqueline G. Pace, R.D.H.
Robert B. Hall, Jr., D.D.S.
Herbert R. Boyd., D.D.S

STAFF PRESENT: Sandra K. Reen, Executive Director
Debbie M. Carter, Administrative Assistant

OTHERS PRESENT: Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

QUORUM: All members of the Committee were present.

PUBLIC COMMENT: Ms. Patricia Bonwell, RDH addressed the Board about the need to serve the public in nursing homes and asked that dental hygienists be allowed to do preliminary examinations and hygiene treatment without a supervising dentist. She stated that hygienists could be required to make referrals for further dental treatment. Ms. Bonwell stated that this would allow hygienists to use mobile clinics to provide preventative oral health care.

Ms. Michelle Satterlund with the Virginia Association of Nurse Anesthetists proposed that CRNA's be allowed to practice in all dental settings regardless of the training of the dentist to align with the practice permitted by the Board of Medicine. She spoke about the level of skill, education and training that certified nurse anesthetists have and offered her assistance in developing the regulations. She also stated that this proposal had been discussed with the Virginia Society of Oral Maxillofacial Surgeons.

MINUTES: Ms. Howard asked if the members had reviewed the minutes of the November 20, 2009 meeting. Dr. Hall moved to accept the minutes. The motion was seconded and passed.

STATUS REPORT ON REGULATORY ACTIONS:

Recovery of Disciplinary Costs – Ms. Yeatts reported that these regulations were submitted for administrative review on December 16, 2009 and are currently being reviewed by the Department of Planning and Budget.

LEGISLATIVE UPDATE: Ms. Yeatts reviewed the following legislation in the 2010 General Assembly session which affects health professions:

- HB 87 (Medical incident compensation; penalties) establishes a new system for determining liability in malpractice claims against physicians and hospitals.

- HB 308 (Mobile dental clinics; Board of Dentistry to develop regulations) codifies the authority to issue regulations as provided in the 2009 Appropriations Act.

- HB 654 (Administrative Process Act; final decision reviewable by a de novo appeal) changes the scope of appeals of administrative case decisions to court from consideration of the record to a de novo hearing.

- HB 662 (Health professions; disciplinary actions) permits boards to accept surrender of a license in lieu of disciplinary action.

- HB 1166 (Controlled substances; unlawfully obtaining or attempting to obtain, report required) requires patients to disclose if they have had controlled substances prescribed by more than one prescriber within the previous 30 days. If this information is not reported, the prescriber must make a report to law enforcement.

- HB 1167 (Scheduled II, III, or IV controlled substances; request and review information about patient) requires prescribers to obtain Prescription Monitoring Program reports on certain patients.

- HB 1169 (Education, continuing; on substance abuse, addiction, & related pain management for those licensed) requires prescribers to obtain continuing education on substance abuse, addiction and related pain management and prescribing practices.

- HB 1170 (Drug screens; random for certain prescriptions) requires physicians to obtain urine drug screening tests of patients when prescribing certain controlled substance for greater than 31 days.

- HB 1263 (Dentist and oral surgeons; reimbursement for certain services) prohibits certain provisions in contracts between dental plans and dentists regarding fees.

PERIODIC REVIEW OF REGULATIONS:

Chart on Part VI, Direction and Delegation of Duties/Chart on Part VII, Oral and Maxillofacial Surgeons – Ms. Reen stated that the internal review was near completion with the final Parts, VI and VII, being circulated to the committee members.

Regulatory Review Mark-up – Ms. Reen said the mark-up shows the changes in structure and content the Committee members have identified in Parts I through IV. She indicated that it was clear that the regulations should be reorganized and developed substantially in this process so she felt there was adequate information for discussing

issuance of the Notice of Intended Regulatory Action (NOIRA) to start the 18 to 24 month process for amending the regulations.

DISCUSSION OF NOIRA – Ms. Reen said the first consideration is deciding the structure the committee will propose. She discussed two options. The first was keeping one chapter and adding articles in each part as needed to separate provisions for dentists, dental hygienists and dental assistants. The second option was to address each profession in a separate chapter and noted that the Board of Medicine is using this approach. Discussions followed about which option would be best for staff, applicants and the public. Dr. Hall moved to use chapters to organize the proposed regulations. The motion was seconded and passed.

Ms. Reen explained that this means the NOIRA will describe the action being proposed as being to repeal the current regulations and replace them with new regulations. She added this would likely require the development of a reference tool to help the public understand where new language was being proposed.

Description of Actions - Ms. Reen asked if the Committee wanted to schedule another meeting to go over the changes that should be identified in the NOIRA or if it would like staff to use the guidance given through the internal review to identify the changes. She added if the Committee was supportive of the latter approach she could work with Ms. Yeatts to have a draft for the March 12th Board meeting. Discussion followed and the consensus was that staff should develop it for inclusion in the March 12th agenda package but that committee members could request that it be deferred for additional work by the Committee.

NEXT MEETING: It was agreed to schedule the next meeting at the March 12th Board meeting.

ADJOURNMENT: Ms. Howard adjourned the meeting at 2:55 p.m.

_____ _____

Myra Howard, Chair Sandra K. Reen, Executive Director

_____ _____

Date Date

Amendment for education in pulp capping procedures

18VAC60-20-61. Educational requirements for dental assistants II.

A. A prerequisite for entry into an educational program preparing a person for registration as a dental assistant II shall be current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board.

B. To be registered as a dental assistant II, a person shall complete the following requirements from an educational program accredited by the Commission on Dental Accreditation of the American Dental Association:

1. At least 50 hours of didactic course work in dental anatomy and operative dentistry that may be completed on-line.

2. Laboratory training that may be completed in the following modules with no more than 20% of the specified instruction to be completed as homework in a dental office:

a. At least 40 hours of placing, packing, carving, and polishing of amalgam restorations;

b. At least 60 hours of placing and shaping composite resin restorations and pulp capping procedures;

c. At least 20 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 30 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

3. Clinical experience applying the techniques learned in the preclinical coursework and laboratory training that may be completed in a dental office in the following modules:

a. At least 80 hours of placing, packing, carving, and polishing of amalgam restorations;

b. At least 120 hours of placing and shaping composite resin restorations;

c. At least 40 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 60 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

4. Successful completion of the following competency examinations given by the accredited educational programs:

a. A written examination at the conclusion of the 50 hours of didactic coursework;

b. A practical examination at the conclusion of each module of laboratory training; and

c. A comprehensive written examination at the conclusion of all required coursework, training, and experience for each of the corresponding modules.

C. All treatment of patients shall be under the direct and immediate supervision of a licensed dentist who is responsible for the performance of duties by the student. The dentist shall attest to successful completion of the clinical competencies and restorative experiences.

VANA
Virginia Association of Nurse Anesthetists
1934
CRNA

August 20, 2010

BY EMAIL
The Honorable Elaine Yeatts
Agency Regulatory Coordinator
Virginia Board of Dentistry
9960 Mayland Drive
Richmond, VA 23233-1463

RE: Periodic Review of the Regulations Governing the Practice of Dentistry and Dental Hygiene / Part VII Controlled Drugs, Sedation and Anesthesia

Dear Ms. Yeatts,

I am writing on behalf of Virginia Association of Nurse Anesthetists (VANA) to comment on the Notice of Intended Regulatory Action (NOIRA) regarding the periodic review of the Regulations Governing the Practice of Dentistry and Dental Hygiene.

Given that Virginia's Certified Registered Nurse Anesthetists (CRNAs) are impacted by Part VII Controlled Drugs, Sedation and Anesthesia, VANA will limit its comments to this section of the NOIRA.

- **Consistency with ADA Guidelines on Sedation and Anesthesia**

The NOIRA indicates the Board of Dentistry (BOD) will consider "amendments that provide consistency with revised ADA guidelines on sedation and anesthesia." VANA supports this concept and urges the BOD to follow the direction of the ADA by amending Virginia's dentistry regulations to allow all dentists to practice with CRNAs.

Allowing all dentist to practice with CRNAs will bring dental anesthesia practice for CRNAs in conformity with other CRNA practice settings in Virginia. This change will better ensure uniformity within dental practices, and expand the ability of dentists to provide quality care to a greater number of Virginia's citizens.

In the dental practice setting, a dentist who fulfills the anesthesia training requirements outlined in 18 VAC 60-20-10 may employ the services of a CRNA. If the dentist has not fulfilled these anesthesia training requirements, the dentist is currently prohibited from practicing with a CRNA.

This limitation impacts the ability of dental patients to access the care they need. For instance, given the current physician shortage, a dentist who practices in a rural setting may be unable to obtain the services of an anesthesiologist. In this situation, the dentist is forced to send the patient elsewhere, or deny the patient anesthesia care.

Further, a dentist who has not received anesthesia training may currently practice with a CRNA in a hospital or ambulatory surgery center, and in these settings, the CRNA may be the only person present with anesthesia training. Neither the Virginia code nor the regulations governing nurse practitioners require any physician to obtain anesthesia training as a prerequisite to supervision. The CRNA is often the only provider with anesthesia training in these settings as well.

In 2007, the American Dental Association (ADA) recognized the need for dentists to have greater flexibility in meeting the needs of patients and adopted new guidelines. The amended guidelines removed prior references requiring the supervision of CRNAs, and removed the requirement that a dentist utilizing a CRNA have specific education and/or training requirements.

The amended 2007 ADA Guidelines state:

> "Administration [of minimal, moderate, deep or general] sedation by another qualified dentist or independently practicing qualified anesthesia healthcare provider requires the operating dentist and his/her clinical staff to maintain current certification in Basic Life Support for Healthcare Providers."

The term "independently practicing qualified anesthesia healthcare provider" is not defined, and there are no references to CRNAs, physicians, or oral surgeons in the adopted guidelines.

Regulatory differences confuse patients and create an environment subject to increased risk. Anesthesia patients expect the same safety standards in all practice settings, regardless of whether an anesthetic is provided by an oral surgeon, a dentist, a physician or a CRNA, and a lack of uniformity among the various anesthesia regulations negatively impacts a patient's safety expectations and sense of well-being, as well as a patient's ability to access care.

By following the lead of the ADA and amending Virginia's dentistry regulations to allow all dentists to practice with CRNAs, Virginia will better ensure uniformity within dental practices, and expand the ability of dentists to provide quality care to a greater number of Virginia's citizens.

Compliance with Drug Enforcement Administration and Drug Control Act
VANA supports the inclusion of a new section related to compliance with the Drug Enforcement Administration and Drug Control Act. This will better ensure professional compliance and patient safety.

18VAC60-20-107 Clarifying Amendments and Administration to Children Under 12
Given that VANA is uncertain what amendment language will be added to 18VAC60-20-107, it cannot comment specifically on this matter. VANA will comment once draft language is proposed.

As for amendments related to the administration of anesthesia to children under 12, it should be noted that CRNAs are trained to administer all types of anesthesia to patients of all ages. Any age limitations should left to the decision of the dentist and the anesthesia provider, based on a review of the professional's skill level, monitoring processes, equipment, support and ancillary staffing.

Further, any limitations placed on the administration of anesthesia to children under 12 should be determined by joint agreement between the dentist and the anesthesia provider, based on the guidelines developed by the provider's respective professional organization.

Patient Monitoring Section
VANA supports the addition of a new section related to patient monitoring and urges consideration of a requirement that all monitoring occur by trained professionals who are qualified to administer anesthesia.

In addition to proper equipment and supplies, VANA urges the BOD to consider the importance of safety for those patients receiving anesthesia. Safe patient monitoring requires an ability to discern the difference between a serious incident and a routine change, and patients are safest when monitoring is performed by trained professionals who have the ability to interpret monitoring modalities, and the skill and authority to correct unsafe situations.

VANA appreciates the opportunity to comment, and we thank the Board of Dentistry for its consideration of these comments. Please do not hesitate to contact me if you have additional questions.

Sincerely,

/s/ Jan Setnor

Jan Setnor, President
Virginia Association of Nurse Anesthetists
2231 Oak Bay Lane
Richmond, VA 23233
Phone 804-754-4122

VIRGINIA DENTAL ASSOCIATION

Constituent of the American Dental Association

7525 Staples Mill Road/Richmond, Virginia 23228/804/261-1610
804/261-1660 FAX

June 14, 2010

Dr. Jeff Levin, President
Virginia Board of Dentistry
9960 Mayland Drive- Suite 300
Richmond, VA 23233

Dr. Levin:

The Virginia Dental Association respectfully requests that the Board of Dentistry add to the regulations concerning mobile clinics (18VAC60-20-10), language that would require the dentist on site to note specifically who the patient will be referred to for follow up care. Currently, under 18VAC60-20-332, Section B.1, it is stated that 'there is a written agreement for follow-up care for patients to include *identification of* and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area.' We would suggest that the regulation include the following:

'the identification of the dentist to whom the patient is referred to (which should be specifically noted on the form sent home with the child) for follow up care and the arrangements for treatment in a ....'

We feel that it is of primary importance, and should be the goal, to find dental homes for the children being seen by these mobile clinics. Having the dentist's name and contact information on the form, given to the child's parents, will be a step toward fulfilling that goal.

We appreciate this opportunity to have input on these most important regulations.

Sincerely,

Alonzo M. Bell, D.D.S.
President, Virginia Dental Association

§ 54.1-2703. Inspection of dental offices and laboratories.

Employees of the Department of Health Professions, when properly identified, shall be authorized, during ordinary business hours, to enter and inspect any dental office or dental laboratory for the purpose of enforcing the provisions of this chapter.

(Code 1950, § 54-167; 1962, c. 45; 1972, c. 805; 1988, c. 765; 2005, cc. 505, 587.)

§ 54.1-2719. Persons engaged in construction and repair of appliances.

A. Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation so employed or engaged shall not be considered to be practicing dentistry. No such person, firm or corporation shall perform any direct dental service for a patient, but they may assist a dentist in the selection of shades for the matching of prosthetic devices when the dentist sends the patient to them with a written work order.

B. Any licensed dentist who employs the services of any person, firm or corporation not working in a dental office under his direct supervision to construct or repair, extraorally, prosthetic dentures, bridges, replacements, or orthodontic appliances for a part of a tooth, a tooth, or teeth, shall furnish such person, firm or corporation with **a written work order on forms prescribed by the Board which shall, at minimum, contain: (i) the name and address of the person, firm or corporation; (ii) the patient's name or initials or an identification number; (iii) the date the work order was written; (iv) a description of the work to be done, including diagrams, if necessary; (v) specification of the type and quality of materials to be used; and (vi) the signature and address of the dentist.**

The person, firm or corporation shall retain the original work order and the dentist shall retain a duplicate for three years.

C. If the person, firm or corporation receiving a written work order from a licensed dentist engages a subcontractor to perform services relative to the work order, **a written subwork order shall be furnished on forms prescribed by the Board which shall, at minimum, contain: (i) the name and address of the subcontractor; (ii) a number identifying the subwork order with the original work order; (iii) the date the subwork order was written; (iv) a description of the work to be done by the subcontractor including diagrams, if necessary; (v) a specification of the type and quality of materials to be used; and (vi) the signature of the person issuing the subwork order.**

The subcontractor shall retain the subwork order and the issuer shall retain a duplicate attached to the work order received from the licensed dentist for three years.

D. No person, firm or corporation engaged in the construction or repair of appliances shall refuse to allow the Board or its agents to inspect the files of work orders or subwork orders during ordinary business hours.

The provisions of this section shall not apply to a work order for the construction, reproduction, or repair, extraorally, of prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth, done by a person, firm or corporation pursuant to a written work order received from a licensed dentist who is residing and practicing in another state.

(1962, c. 45, § 54-147.2; 1972, c. 805; 1988, c. 765.)

NADL
National Association of
Dental Laboratories

PREFACE
to the
NADL GUIDELINES FOR ESTABLISHING
STATUTORY REGULATIONS OF DENTAL LABORATORIES

This NADL regulatory guideline was designed to be a minimum standard of regulation – a type of state legislation that would be beneficial for the general public and effective for both the dental and dental laboratory professions.

The members and leaders of a state dental laboratory association must explore crucial areas and make difficult decisions and commitments prior to seeking any regulation at the state level. They must be certain that their crusade for regulation is in the best interest of the public health and welfare and that it is not self-serving. They must then convince their state legislature that this is so! First and foremost, the industry and profession within a particular state should be behind such an effort and therefore, due diligence through surveying laboratories and/or technicians in a given state should take place prior to moving forward with a particular proposal to ensure collective support, interest and commitment.

State Legislators feel strongly that the protection of the health and safety of the public is the foundation upon which all state dental practice acts and other healthcare regulatory legislation should be based. They also feel that the public welfare should be protected with a minimum amount of governmental interference in this free enterprise system.

Before legislators agree to license or adopt certification standards for persons in any occupation, they are likely to explore other less stringent regulatory approaches. Among the alternatives to individual licensing is the enforcement or strengthening of existing statutes relating to deceptive or unfair trade practices. Another is the assignment of inspection or other supervisory authority to an existing agency: e.g., a department of health or department of licensing and registration. A third alternative is to license or register establishments rather than individuals.

TYPES OF REGULATION

REGISTRATION

Registration is an appropriate form of regulation when the threat to life, health, safety and economic well-being is relatively small and when other forms of legal redress are available to the public. In its simplest form, registration requires that an individual file his or her name and address on behalf of himself or her self for or on behalf of an entity (the dental laboratory) with a designated agency. There is usually no pre-entry screening by a regulatory board. Registration in this form does little more than provide a roster of practitioners or facilities/businesses.

CERTIFICATION

Certification is a form of regulation which grants recognition to individuals who have met predetermined qualifications established by a state agency or other recognized body. Only those who meet the qualifications and maintain their certification may legally use the designated title. However, non-certified individuals may offer similar services to the public as long as they do not describe themselves as being "Certified." Certification is especially appropriate when the public needs assistance in identifying competent practitioners but where the risk to health and safety may not be severe enough to warrant full licensure of individuals working in a particular occupation.

Either of the above could be coupled with minimum standards set by the state agency such as requirements on storage of prescriptions, health and safety/infection control standards, etc.

LICENSURE

Individual licensing is a process by which an agency of government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency through education, testing, certification or a combination of each required to ensure that the public health, safety and welfare will be reasonably well protected. Legislators would have to be convinced that this protection is absolutely necessary in order to have an individual licensing bill passed.

LABORATORY REGULATION

Governing Agency

Regulation of a dental laboratory addresses the establishment of standards for the business entity rather than for the individual technician.

The NADL regulatory guideline endorses registration of the dental laboratory facility in conjunction with registration of at least one Certified Dental Technician in the laboratory upon whom each credential depends.

NADL feels strongly that the important issue is the passage of regulation based on education and experience requirements, not the agency under which such regulation is accomplished.

The important issue is the passage of legislation that is based on education and experience requirements at least equal to those established by the National Board for Certification in Dental Laboratory Technology (NBC).

Several possible governing bodies include, but are not limited to, the following examples:

1. Board of Dental Laboratory Examiners
2. Department of Health
3. Professional Regulatory Board
4. State Board of Dentistry

Requirements for Regulation

Regulation of the dental laboratory facility, as addressed in this guideline, follows the standards established by the National Board for Certification in Dental Laboratory Technology for Certified Dental Laboratories (CDL). These standards set forth minimum requirements for health, safety, infection control procedures, facility equipment and conditions. Certified Dental Laboratories must also employ Certified Dental Technicians in supervisory positions in each certified specialty department.

Registration of dental technicians follows standards established by the National Board for Certification in Dental Laboratory Technology (NBC), which examines and credentials technicians in each of five specialties. State regulations may require additional education and experience; the Certified Dental Technician (CDT) requirement is considered, for the purposes of this Model Bill, to be the minimum requirement for registration.

1. Certified Dental Technician

   The certification program administered by the National Board for Certification in Dental Laboratory Technology represents the only education and experience standards established for dental technology. In order to be regulated, a dental laboratory should be required to employ at least one Certified Dental Technicians or the equivalent. It is the only dental technician certifying body recognized by the American Dental Association and it is accredited by the American National Standards Institute.

2. OSHA Compliance/Infection Control

   The National Board for Certification in Dental Laboratory Technology requires that certified laboratories install and practice effective infection control procedures. These should be a minimum requirement for a regulated dental laboratory.

3. Grandfather Clause/Grace Period for Compliance

   If there is a demonstrated need for regulation of dental laboratories to protect the public health and welfare, it follows that all laboratories in existence when a regulatory bill is passed should be required to comply with the standards and regulations of the bill within a reasonable period of time.

4. Disclosure

   There should be adequate disclosure of material content and point of origin of the manufacture of each restoration delivered to the dentist.

5. In Office Dental Laboratories

   Dental laboratories that are physically located in a dental office would be exempt from compliance of the model bill as the licensed practitioner, the dentist is on site to oversee process, but best practices would encourage voluntary compliance.

NADL
National Association of
Dental Laboratories

MODEL BILL FOR DENTAL LABORATORIES AND DENTAL TECHNICIANS

Originally Adopted June 1988
Amended June 1992
Amended December 2005

Whereas, this Legislature [General Assembly] finds that the health, safety and welfare of the citizens of this State [Commonwealth] are promoted by the establishment of the regulatory procedures for the dental laboratory industry, it is hereby resolved that the following shall be enacted:

SECTION I. Purposes:
The purpose of this Act is to promote the health, safety and welfare of the citizens of this State [Commonwealth] by requiring dental laboratories conducting business in this state employ at least one Certified Dental Technician certified by the National Board for Certification in Dental Laboratory Technology be permitted to engage in the manufacture and repair of dental prosthetic appliances as hereinafter provided.

SECTION II. Definitions:
2.1 Dental Laboratory: A commercial dental laboratory is a corporation, partnership or sole-proprietor engaged in the manufacture or repair of dental prosthetic appliances on the prescription of and for a licensed dentist or the work authorization of another commercial dental laboratory; provided, however, that the provisions of this paragraph are subject to the exemptions contained in Section VI of this Act.

2.2 Dental Technician: shall mean any person who offers or undertakes to perform or accomplish dental technology.

2.3 Certified Dental Technician: shall mean a dental technician who has met the standards set by the National Board for Certification in Dental Laboratory Technology or its equivalent as established by this state.

2.4 Licensed Dentist: shall mean any person duly licensed to practice dentistry under any statutes of this State [Commonwealth] or practitioners licensed in other states.

2.5 Prescription: shall mean a written instrument executed by a licensed dentist and directed to a regulated dental laboratory authorizing the manufacture or repair of a dental prosthetic appliance for such licensed dentist.

2.6 Work Authorization: shall mean a written instrument executed by a regulated dental laboratory authorized by prescription by which such dental laboratory subcontracts all or part of the fabrication or repair of a dental prosthetic appliance authorized by prescription to another regulated dental laboratory.

SECTION III. REGULATION

3.1 Upon the effective date of this Act, all dental laboratories operating, doing business or intending to operate or do business within this State [Commonwealth] shall be required to register with the department. In order to be regulated under this Act, a dental laboratory must employ or be operated under the supervision of one or more Certified Dental Technicians as defined in this Act.

3.2 In order to be regulated under this Act, a dental laboratory shall practice infectious disease control as required by OSHA.

3.3 A dental laboratory wherever located shall be considered as operating or doing business in this State [Commonwealth] if its work product is prepared pursuant to a written instrument originating within this State [Commonwealth].

3.4 A dental laboratory shall disclose to the dentist the material content of a prescribed restoration with any contraindications for purposes of ensuring the health and safety of the patient

3.5 A dental laboratory shall disclose to the dentist the point of origin and location(s) of manufacture of the prescribed restoration.

SECTION IV. PENALTIES FOR USE OF NON-REGULATED DENTAL LABORATORY

4.1 It shall be illegal for any dentist licensed in this State to have a dental prosthetic appliance manufactured in a dental laboratory, in the State or otherwise that does not meet the regulatory requirements of this State.

SECTION V. IN OFFICE DENTAL LABORATORIES

5.1 Dental laboratories physically located within a dental office shall be exempt from all sections except 3.2 of this law.

SECTION VI. EFFECTIVE DATE

This Act shall become effective after becoming law.

Authored by:
National Association of Dental Laboratories
325 John Knox Road, L103
Tallahassee, FL 32303

800/950-1150 Phone 850/222-0053 Fax www.nadl.org www.nbccert.org

ADA
2009 Future of Dental Laboratory Technology Conference
August 7, 2009

Presented by Bennett Napier CAE

NADL
National Association of **Dental Laboratories**

The Foundation
For Dental Laboratory Technology

NBC
National Board for Certification in **Dental Laboratory Technology**

Laboratory Industry/Profession

- **Number of Dental Laboratories in the U.S.**

  13,000 (7,096 are labs with a payroll, remainder are one person laboratories)

  Source: Bizminer July 2009 Market Research Report

- **Number of Dental Technicians in the U.S.**

  53,000

  Source: 2008, U.S. Dept of Labor, Bureau of Labor Statistics

Laboratory Industry/Profession

- **Average Annual Gross Sales Per Dental Laboratory in the U.S.**

  $632,000.00

  Source: Mindbranch 2008 Market Report

- **Constriction in the U.S. Dental Lab Market:**

  1.2% decline in number of establishments each year since 2002

  Source: Mindbranch 2008 Market Report

Gross Sales for Dental Laboratories

Source: 2008 NADL Survey

	Median
Small Labs (1-9)	$275K
Medium Labs (10-25)	$1.5M
Large Labs (>25)	$6.5M

Number of Dental Clients Per Dental Laboratory by Size

Source: 2008 NADL Survey

	Median
Small Labs (1-9)	25
Medium Labs (10-25)	75
Large Labs (>25)	350

Net Profit for Dental Laboratories by Size

Source: 2008 NADL Survey

	Median
Small Labs (1-9)	18%
Medium Labs (10-25)	10%
Large Labs (>25)	12.5%

Market Trends

- Dental laboratory sales in the U.S. in 2008 reached $10.5 billion.

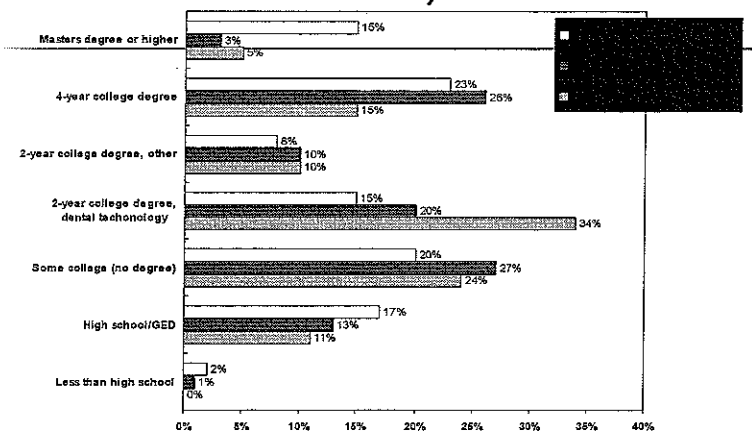
  Source: IDATA 2008 Market Research Report

- The 2009 economy aside, dental laboratory sales on average through 2015 should average close to 5% increases.

  Source: IDATA 2008 Market Research Report

Education of Lab Owners

Source: 2008 NADL Survey



U.S. Lab Market Product Segmentation

PFM Crowns 28.3M

- Porcelain fused to non-precious metal 12M
- Porcelain fused to precious metal 16M

Dentures 5.5M

- Full dentures 3M
- Partials 2.5M

Partials 2.5M

- Metal substructures 75%
- Flexible substructures 25%

Source: Henry Schein

Prosthetic Market 2009 to 2014

	2009	*2010 – 2014*
~~Lab Core Business (PFM)~~	***0 – (5)%***	***1%***
CAD/CAM Restorations & Rapid Manufactured Substructures	***5 – 10%***	***14 – 20%***
Pressable Ceramics & Rapid Manufactured Ceramics	***2 – 4%***	***10-15%***
Implant Restorations	***8 – 9%***	***12-16%***
Removable Restorations	***0 – 3%***	***2-3 %***

***Sources*: iDATA Research, 2008 Report**
Dentsply International, January 2009

Voluntary Industry Standards

Certified Dental Technician (CDT) – requires 5 years in the profession to sit for exams, 2 written exams, 1 practical exam, 12 hours of CE a year to maintain. ANSI accredited program. *Assesses applied skill & theoretical knowledge against a national standard.* 12% of technicians nationally are certified. Officially recognized by the ADA.

Voluntary Industry Standards

CERTIFIED DENTAL LABORATORY

Certified Dental Laboratory (CDL) – provides assurance a laboratory has *met specific standards relating to quality assurance, business processes and OSHA standards. Requires a third party review of photos of the facility.*

Voluntary Industry Standards

DAMAS
Dental Appliance Manufacturers Audit Scheme

DAMAS – requires a third party on site inspection. *Based on ISO 14385 medical device standards and geared to the lab environment. Ensures dental laboratories are complying with FDA QS/GMP regulations.* Provides dentist with assurance laboratory is tracing raw materials by patient case

State Regulations

- **States with existing dental laboratory regulations**:
- Texas
- Florida
- Oklahoma
- South Carolina
- Kentucky
- Ohio
- Illinois

- **States working on dental laboratory regulation (either planning stage or bill draft stage)**

- Minnesota, New York, Pennsylvania, New Jersey, North Carolina, Alabama, Indiana, Kansas

Dental Laboratory Regulation
What does the industry want?

- 92% of laboratories **support a requirement that both foreign and domestic dental laboratories disclose where a restoration was manufactured and provide a list of patient contact materials used in each restoration** (through state dental practice acts).
- 42% **support point of origin and material disclosure to the patient at time of final invoice** from the dentist to the patient. Another 44% **support such information going in the patient's record**.

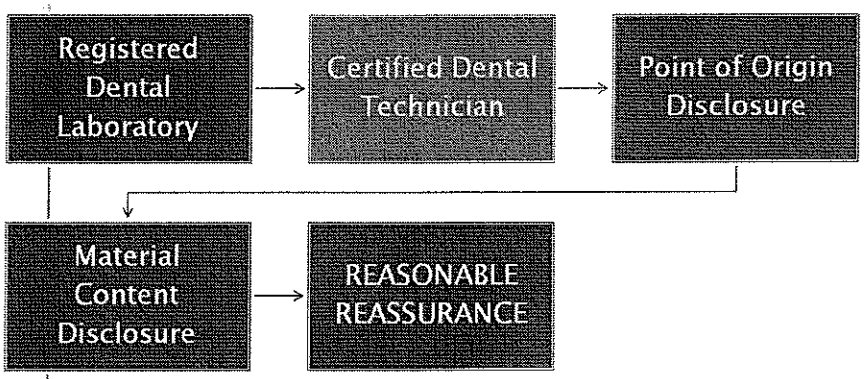
Source: NADL and NBC Survey, June 2009

Dental Laboratory Regulation
What does the industry want?

- 76% of dental laboratories **support mandated registration** of laboratories with a state agency (through state dental practice acts)
- 82% of dental laboratories **support a mandate that at least one technician in each dental laboratory should be a Certified Dental Technician** (through state dental practice acts)

Source: NADL and NBC Survey, June 2009

Pathway to Assurance



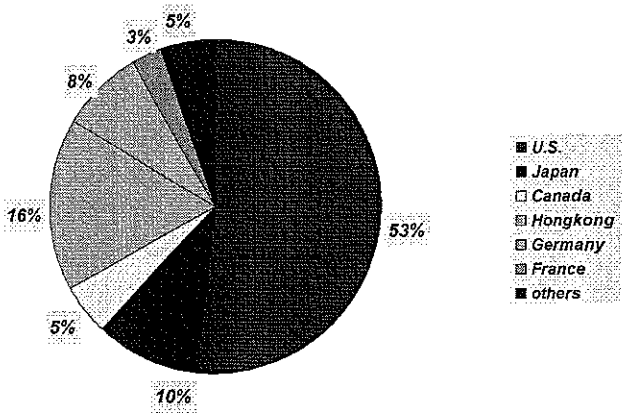
FDA Regulations

- Most domestic dental laboratories are exempt from registration but all laboratories have to comply with quality system/good manufacturing practices
- Marked increase in inspection of domestic dental laboratories by FDA from 2007-2008.
- Thirty two (32) countries with foreign dental laboratories importing into the U.S.

Source: www.fda.gov/cdrh

Main Destination of Chinese Lab Products for Overseas Dentists

Source: Chinese MDFDA



Dental Crowns Being Made Overseas

- 2005: There were 5 million dental crowns for U.S. patients made by foreign dental laboratories (10% of the market at the time)
- 2007: Its estimated that 7.1 million dental crowns were manufactured off shore
- By 2010: It's predicted that 14 million dental crowns will be manufactured by foreign dental laboratories for U.S. dental patients
- *Sources: U.S. Department of Commerce and U.S. International Trade Commission*

Gaps in Dental Education

- 87% of lab owners and CDTs say improvement in "impression taking skills" are needed for dental graduates
- 76% of lab owners and CDT's say improvement is needed by dental school graduates on how to "**communicate with the laboratory including how to properly write an R/X**"
- 65% of lab owners and CDT's say improvement is needed by dental school graduates in "**crown preparation**"

Source: NADL and NBC Survey, June 2009

Gaps in Dental Education

- 77% of the time lab owners and CDT's say that on a routine basis "**they have to select the materials to fulfill a prescription from a licensed dentist.**"
- 82% of lab owners and CDT's say there is a continued need for "**formally educated dental technicians**" to serve dentistry and the laboratory industry.

Source: NADL and NBC Survey, June 2009

Recommended Solutions

- **Dental Education** – universal standard of training for dental school students in lab/dentist communication; impression taking; material selection; treatment planning, crown preparation and removables
- **DLT Education** – ADA Foundation should support DLT accredited programs and the Foundation for Dental Laboratory Technology; organized dentistry place value on formally educated dental technicians through dental schools and laboratory schools sharing "high end technology" and ADA recommending that state dental societies work with state legislatures on funding for DLT programs.

Recommended Solutions

- **Off Shore Outsourcing –** ADA should work with NADL to ensure enforcement of disclosure to patients of material composition and point of origin of restorations. ADA should work with ADA to ensure that U.S. FDA regulations apply to dental schools, dental chains that outsource direct to foreign laboratories.
- **Regulation –** ADA should provide a policy of support that state dental practice acts include "dental laboratory regulation" consisting of lab registration; CDL or CDT; material & point of origin disclosure. Ensure U.S. FDA regulations apply to dental practices that use CAD/CAM systems (in essence, dental practices that now run an inhouse laboratory business model)

Recommended Solutions

- **Technology and Dentist/Lab Relationship –** ADA should educate its membership about the value of joint case planning; ADA should collaborate with NADL on education relative to utilization of "digital dentistry"; ADA should work with NADL and dental manufacturers on "grey market" materials.

For More Information Please Contact:

NADL
National Association of Dental Laboratories

325 John Knox Rd, L103
Tallahassee, FL 32303
Toll Free (800) 950-1150
Phone (850) 205-5626
Fax (850) 222-0053
www.nadl.org

www.nbccert.org

www.foundationforDLT.org

DENTAL RESTORATION DISCLOSURE FORM

Date:_____

Dentist:_____
(Name of Dentist Issuing Prescription)

Patient:_____
(Name of patient shown on prescription or other identification relating to the prescription)

This case was manufactured
____ In whole (or) ____ In part by:
(check one)

Technician's Name :_____

South Carolina Registration No:_____

at:_____
(Dental Laboratory)

in_____, _____, _____
(City) (State) Country)

using the following FDA registered materials, with percentages, in the final restoration:

100% of the porcelain materials used in this restoration are from Ivoclar Vivident's Dsign porcelain system. The alloy is noted with the attached Identalloy sticker.

Dental Laboratory Regulations by State, Registration and Certification
Updated October 2008

	Texas	South Carolina	Kentucky	Florida	Oklahoma	Ohio
Laboratory Registration Fee	$105.00 Annually	$102.00 Annually	$50.00 Annually	$200.00 Every 2 years	$200.00	N/A
Labs Required to Register	Yes	Yes	Yes	Yes	Yes	No
Technician Registration Fee	N/A	$100.00 initial $102.00 for renewal	$10.00	N/A	N/A	No N/A
Registry of Technician Employees	No	No	Yes	No	No	No
Requirement to Provide # of Employees	Yes	No	Yes	No	No	No
Certificate to Perform Dental Technology	No	Yes*	No	No	No	No
CDT or Equivalent Required	Yes	Yes	Yes	No	No	No
State Laws and Rules Exam Required	No	Yes	No	No	No	No
Out of State Laboratories Required to Register	Yes	Yes	Yes	No	No	No
Dentists Required to Use Registered Laboratory	Yes	Yes	Yes	No	No	No
Material Disclosure Required	No	Yes	No	Yes	No	Yes
Point of Origin Disclosure Required	Yes	Yes	No	Yes	No	Yes
CE for One Technician in each Laboratory	Yes	Yes	No	Yes	No	No

P 33

* The certificate to perform dental technological work in SC requires each of the following:
HS or GED; 2 year DT degree or 3 years OJT; CDT or pass SC state board; and pass SC laws and rules exam

Implementing the South Carolina Bill
Section 1, Chapter 13, Title 40 of the 1976 code
Section 40-15-125

Complying with the registration of out-of-state dental technicians:

Intention
The intention of this requirement is to ensure that dental restorations that are prescribed by a dentist within South Carolina, but which are manufactured outside of the state of South Carolina, are fabricated with the oversight of an appropriately credentialed dental technician to ensure the quality of the work for the benefit of the patient. This is equitable to the in-state criteria for a dental technician. In order to comply with the law the following steps need to be completed by a dental technician working outside of the state of South Carolina, which coincide with what an in-state dental technician needs to demonstrate/provide:

1) The dental technician must register with the Board of Dentistry of the state of South Carolina. The application is located online at:
http://www.llr.state.sc.us/POL/Dentistry/PDF/DenTechApp.pdf

2) The dental technician must submit proof of a high school diploma or equivalent as well as documentation of completion of two years course study or three years of study under a licensed dentist or registered dental technician.

3) The dental technician must submit a copy of proof of current Certified Dental Technician (CDT) status. Successfully complete the South Carolina Dental Practice Act Examination. (This will be mailed to the applicant after and application and fee are submitted.) If not a CDT, letters of recommendation are required.

4) Pay a $100 registration fee.

Note: The criteria for out-of-state dental technician registration are exactly the same as in-state dental technician registration and thus it is recommended that the same forms and administrative protocol be utilized.

Recommendations for complying with point of origin and material content disclosures:

Intention
The intention of this requirement is to capture the following information for the benefit of the dentist and the dental patient:

1) The location in which the work was performed; and
2) A list of the materials used in the work.

This information must be presented by the registered dental technician who accepted the prescription as well as any subsequent technicians who perform work, in whole or in part, on the restoration. However, it is not the intention of this requirement to require any additional form to be completed. The required disclosure information may be noted on an invoice that is delivered with the case, or a laboratory may choose an alternative method of communicating the required information so long as it is complete and delivered with the case.

The following information is required to be communicated, in writing and delivered with the case, when returned to the dentist:

1) The name of the person who is registered with the State Board of Dentistry
2) The country of origin where the dental technological work was performed, in whole or in part*
3) A list of the materials contained in the final restoration.
4) The name, address and certificate number of the person (or persons) registered (with the State of Dentistry, and thus authorized) to manufacturer the restoration.

Two examples of the necessary information are below:

(*In the event that a single laboratory performs the work*):

Name of the registered dental technician:	Lindy Sikes, CDT
Country of Origin:	Charlotte, NC – United States
Materials contained in the final restoration:	Ivoclar inline porcelain and Ivoclar high noble alloy
Name, address and certificate number:	Lindy Sikes, CDT 4701 Brookshire Blvd., Charlotte, NC 28216 066680-00

***(*In the event that multiple laboratories perform some/part of the work – i.e. the work is outsourced*):**

Name of the registered dental technician:	Joe Doe, CDT
Country of Origin:	Anywhere, NC – United States
Materials contained in the final restoration:	Heraeus Kulzer acrylic denture resin and Heraeus Kulzer composite teeth
Name, address and certificate number:	Joe Doe, CDT 224 Brookshire St., Anywhere, NC 20821 066680-00

Outsourced the Partial denture framework to:

Name of the registered dental technician:	John Buck, CDT
Country of Origin:	Everywhere, FL – United States
Materials contained in the final restoration:	chrome cobalt
Name, address and certificate number:	John Buck, CDT 123 Sunshine Ave, Everywhere, FL 33321 066621-00

Information on How Out of State Labs Comply for Texas and Kentucky

	Texas	Kentucky	South Carolina
How do I register my dental laboratory to do business in your state?	1) Complete Application for Dental Laboratory Registration: www.tsbde.state.tx.us/documents/licensingForms/appRegDentalLab.pdf 2) Proof of current and active certification for the designated CDT that will be on premises for at least 30 hours per week. A copy of the current CDT certification issued by the National Board of Certification (www.nadl.org) is acceptable.	1. Completed lab application sworn before a Notary Public; http://www.dentistry.ky.gov/NR/rdonlyres/4BA975E9-2DB5-4D4D-9ACD-0CDA4DBDDE74/143210/LABAPPa.pdf 2. $50.00 application fee; 3. Photograph of the owner attached to the laboratory registration application; 4. Names of all technicians and CDT's listed on the application in the appropriate space provided; 5. Copy of current CDT certification card for each CDT being registered; and 6. Completed application for each technician or CDT with the $10.00 application fee for each technician or CDT being registered. http://www.dentistry.ky.gov/NR/rdonlyres/4BA975E9-2DB5-4D4D-9ACD-0CDA4DBDDE74/143211/techAPPa1.pdf	1) The technician must register, not the laboratory. Application: http://www.llr.state.sc.us/POL/Dentistry/PDF/DenTechApp.pdf Requirements: http://www.llr.state.sc.us/POL/Dentistry/PDF/requirements%20dental%20tech.pdf 2) Must submit a High School diploma or equivalent and documentation of completion of 2 year course of study or 3 years of supervised work under licensed dentist or registered dental technician.
What is the application fee?	$105.00	$50.00	$100.00
What documentation must I show in order to register?	Proof of current and active certification for the designated CDT that will be on premises for at least 30 hours per week. A copy of the current CDT certification issued by the National Board of Certification (www.nadl.org) is acceptable.	Must submit a copy of current CDT certification card for each CDT being registered.	Must submit a copy of proof of current CDT. Successfully complete the South Carolina Dental Practice Act Examination. (This will be mailed after they receive your application and fee.) HS Diploma or equivalent, and school or experience as outlined above. Letters of recommendation.
How does my laboratory renew the registration with your state?	If you are within 45 days of your renewal deadline, you can renew on-line here: http://www.texasonline.state.tx.us/NASApp/rap/apps/license/jsp/eng/welcome.jsp?agency=70&instance=tsbde_lab.	Renewal notice sent in October. Just return letter with answers. Include CDT proof.	Renewal notice sent by October 15th. Renew on-line by December 31st to avoid late fees.
How often must my laboratory renew the registration?	Annually.	Annually by December 31st.	Annually by December 31st.
	Continued on next page		

What is the renewal fee?	$101 plus $3 for e-pay	$50 per lab and $10 per technician	$102
Additional renewal information.	A dental laboratory renewing a certificate must provide proof that the designated CDT has met the continuing education requirements of a recognized board of certification for dental technology, or its successor.		
What administrative body oversees laboratory registration?	The Dental Laboratory Certification Council oversees the administrative process, but a registration certificate is issued by the SBDE upon application approval.	The Board oversees. The Dental Laboratory Advisory Commission gives assistance as needed.	The Board of Dentistry.
Is a dentist in your state responsible for selecting a registered dental laboratory or is the responsibility on the laboratory?	They both assume responsibility. The laboratory is responsible for registering, but the dentist has the responsibility of only utilizing a registered laboratory.	The dentist is responsible for selecting a registered laboratory.	Dentist and Technician are responsible.
How will the dentist know which labs are registered?	It is possible to check a lab on the Board's website here: http://www.tsbde.state.tx.us/dbsearch/default.htm#3	They can purchase a disk or a hard copy for $50. Alternately, they can mail a written request, with $20, for laboratory verification. Look up is available online: http://web1.ky.gov/gensearch/LicenseSearch.aspx?AGY=13	Technicians can be looked up on the Board's Website: https://verify.llronline.com/LicLookup/LookupMain.aspx
What governing body notifies a laboratory if it is not registered and how?	Texas Dental Board. Initially a letter will be sent. If a compliant is filed an investigator will contact the laboratory directly.	The Board will send a cease and desist order. If a complaint has been filed, they will call the laboratory.	The Board of Dentistry.
What is the grace period and penalty?	Up to 90 days after the renewal date, a lab may renew by paying an additional fee. The lab must pay the regular renewal fee plus an additional fee equal to one-half of the renewal fee. More than 90 days but less than a year the lab must pay twice the normal renewal amount. More than one year lapse means the lab must re-apply as though applying for the first time.	$25 late fee per lab; $5 for CDTs. After December 31st they must pay the late fee. More than a year without renewal, they must re-apply as though applying for the first time.	If not renewed by December 31st, you must pay double the renewal fee. After January 31st, it is double the renewal fee plus $5 per day. After March 31st, you must reinstate which costs $300 plus app fee of $75.
Who gets penalized/fined for non-compliance?	Laboratory owner.	Laboratory owner.	Laboratory technician.
	Continued on next page		

What are the penalties/fines for non-compliance?	Fine may not exceed $5,000 per violation. Amount fined is determined by the Executive Director or a Board Subcommittee.	Fine to fall between $100 and $500 for the first offense, no less than $1,000 for each offense thereafter, to include possible jail time for not more than 6 months.	If a complaint is filed, an investigation will take place.
Is anything required to be submitted in person?	No.	Only for disciplinary action.	Not to apply or renew, but if the investigation leads to a hearing, then yes.
What is the method of submission? Fax, mail, e-mail?	Mail.	Mail.	Mail.

States that Are working on State Legislation or Administrative Rules on Dental Laboratory Regulations
As of June 2009

State	Bill Filed	Lab Registration	CDT	Material Disclosure	Point of Origin Disclosure
Alabama	Yes	No	No	Yes	Yes
Minnesota	No	Yes	Yes, grandfather	Yes	Yes
New York	Yes	No	Pending	Yes	Yes
Pennsylvania	No	Yes	Yes	Yes	Yes
New Jersey	No	Yes	No	Yes	Yes
Maine	No	No	Yes	Yes	Yes
Kansas	No	Yes	Yes	Yes	Yes
North Carolina	No	Yes	CDL required	Yes	Yes
Ohio	Admin Rule	No	No	Yes	Yes
Texas	Admin Rule	Yes	Yes	Yes	Yes

4715-5-02 **Written work authorization.**

(A) The Ohio state dental board hereby prescribes that the written work authorization required in division (B) of section 4715.09 of the Revised Code shall be on printed forms for both original and copy and shall contain the following:

(1) The name and address of the entity or person to whom the written work authorization is directed, hereinafter referred to as "primary contractor".

(2) The patient's name and/or identifying number. In the event such identifying number is used, the name of the patient shall be written upon a copy of such written work authorization retained by the dentist.

(3) A description of the work to be done, with diagrams if applicable.

(4) A description of the type of the materials to be used.

(5) The actual date on which the authorization was written.

(6) The signature in ink by the dentist issuing the said written work authorization, his state dental license number and his office address.

(7) A section to be completed by the primary contractor and returned to the issuing dentist that shall disclose all of the following information and certify that the information is accurate by including the signature of a responsible party of the primary contractor:

(a) A list of all materials in the composition of the final appliance;

(b) The location where the appliance was fabricated, including the name, address, phone number and FDA registration number, if applicable, of the person or entity performing the work;

(c) The location, including name, address, phone number and FDA registration number, if applicable, of any sub-contractors utilized to perform some or all of the services relative to the fabrication of the appliance;

(d) A description of all disinfection methods used in the fabrication of the appliance.

(B) Upon request, the dentist shall provide each patient or authorized patient representative with a duplicate copy of the section of the form described in section (A)(7) of this rule.

~~(B)~~(C) The dentist shall retain a copy of the written work authorization for two years from its date as a part of the patient record.

~~(C)~~(D) The primary contractor~~unlicensed person, partnership, association, or corporation~~ shall retain the original work authorization for two years from its date. Copies of work authorization forms shall be open for inspection by the Ohio state dental board and its investigators.

~~(D)~~(E) If the primary contractor~~unlicensed person, partnership, association, or corporation~~ receiving a written work authorization from a licensed dentist engages another unlicensed person, partnership, association, or corporation (herein referred to as "sub-contractor") to perform some of the services relative to such work authorization, as provided for in division (C) of section 4715.09 of the Revised Code, he or it shall notify the issuing dentist in advance of the fabrication of the appliance of the name and location of the subcontractor and shall furnish a written sub-work authorization with respect thereto on forms prescribed by the state dental board ~~which shall contain the following:~~

The sub-contractor shall retain the sub-work authorization and the primary contractor shall retain a duplicate copy, attached to the work authorization received from the licensed dentist, for inspection by the state dental board or its duly authorized agents, for a period of two years. Copies of work authorization forms shall be open for inspection by the Ohio state dental board and its investigators.

~~(1) The name and address of the sub-contracting entity or person to whom the work authorization is directed.~~

~~(2) A description of the work to be done, with diagrams if applicable.~~

~~(3) A description of the type of materials to be used.~~

~~(4) The actual date on which the written work authorization was written to the sub-contractor.~~

~~(5) The name, address, and signature of the entity or person issuing the sub-work authorization.~~

~~(E) The sub-contractor shall retain the original sub-work authorization and the entity engaging the sub-contractor shall retain a duplicate copy of the sub-work authorization, attached to the written work authorization received from the licensed dentist, for a period of two years.~~

~~(F) All written work authorizations and sub-work authorizations required by paragraphs (B), (C), and (E) of this rule, held by the dentist or unlicensed person, partnership,~~

~~association, or corporation shall be open for inspection without a subpoena for two years by the state dental board, its authorized agents, or the prosecuting attorney of a county or the director of law of a municipal corporation wherein the written work authorizations or sub-work authorizations are located.~~

~~(G) The Ohio state dental board hereby prescribes that the demand for a written work authorization in division (D) of section 4715.09 of the Revised Code, be made in writing. The unlicensed person shall retain a copy of the original written demand for a written work authorization form for a period of two years. Copies of work authorization form demands shall be open for inspection by the Ohio state dental board and its investigators.~~

~~(H)~~(F) The foregoing does not prohibit the inclusion of additional information on the written work authorization when the same is necessary or desirable.

~~(I)~~(G) "Unlicensed person, partnership, association or corporation" as used in this rule, includes, but is not limited to, dental laboratory or dental laboratory technician.

(H) "Appliance" as used in this rule, includes, but is not limited to, any denture, plate, bridge, splint, crown, veneer, or orthodontic or prosthetic dental device.

FDLA Sample Laboratory Procedure Prescription

Dentist Information:

Name: _____ Phone: _____

Practice Name: _____ Fax: _____

Address: _____ Email: _____

City: _____ State: _____ Zip: _____

Florida License No.: _____

Date Sent to Lab: _____

Laboratory Information:

Laboratory Name: _____ Phone: _____

Technician Name: _____ Fax: _____

Address: _____ Email: _____

City: _____ State: _____ Zip: _____

Florida Registration No.: _____

Date Received by Lab: _____

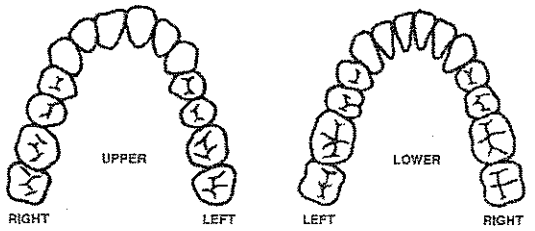
Patient Name or Number: _____ ❑ Male ❑ Female Age: _____

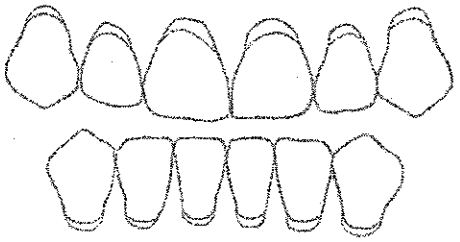
Known Allergies: _____

_____

Design Case Here:

Please provide descriptive information to clearly identify each separate and individual piece of work to be performed in the area below. Additionally, please specify materials to be contained in each work product (or use check boxes below).





INSTRUCTIONS:

Shade: _____ ❑ Please schedule shade verification.

The following materials are to be used in producing the above restoration:

❑ _____	❑ _____
❑ _____	❑ _____
❑ _____	❑ _____
❑ _____	❑ _____

(Laboratory should write in products or brand names available on the lines above.)

Return Request:

Month _____ / Date _____ / Year _____ Time _____

I authorize the above procedure to be performed.

Prescribing Dentist Signature: _____ Date: _____

Signature can be original or electronic.

Copies of this prescription must be maintained, either on paper or stored electronically for a period of four (4) years.

This prescription form is provided as a sample by the Florida Dental Laboratory Association. It is recommended that laboratories reference Chapter 466, Section 466.021 of the Florida Statutes and Section 64B5-17.006 of the Florida Administrative Code before use.

FDLA Sample Laboratory Case Point of Origin and Material Disclosure Form

Dentist Information:

Name: _____ Phone: _____

Practice Name: _____ Fax: _____

Address: _____ Email: _____

City: _____ State: _____ Zip: _____

Florida License No.: _____

Laboratory Information:

Laboratory Name: _____ Phone: _____

Address: _____ Fax: _____

City: _____ State: _____ Zip: _____

Florida Registration No.: _____ Email: _____

Date Restoration Delivered/Shipped to Dentist: _____ Date Received by Dentist: _____

Patient Name or Number: _____ ❑ Male ❑ Female Age: _____

Known Allergies: _____

_____

Technician Name: _____ CDT No.: _____
Name of technician that manufacturered or oversaw the production of the case. *If applicable*

Laboratory CDL No.: _____ DAMAS No.: _____
If applicable *If applicable*

Laboratory ISO Registration No. *If applicable:* _____

Return Information:

This portion of the case: _____

❑ Was manufacturered by technician(s) in our own laboratory.

❑ Was manufacturered by a third party provider located in _____
Contact information provided upon request.

Materials used in this portion of the case:

❑ _____ ❑ _____

❑ _____ ❑ _____

Laboratory should write in products and brand names on the lines above. Identalloy sticker, Identceram sticker, manufacturer provided material content & lot number information, MSDS sheet or certificate of authenticity should be affixed below or attached as an addendum.

This portion of the case: _____

❑ Was manufacturered by technician(s) in our own laboratory.

❑ Was manufacturered by a third party provider located in _____
Contact information provided upon request.

Materials used in this portion of the case:

❑ _____ ❑ _____

❑ _____ ❑ _____

Laboratory should write in products and brand names on the lines above. Identalloy sticker, Identceram sticker, manufacturer provided material content & lot number information, MSDS sheet or certificate of authenticity should be affixed below or attached as an addendum.

This portion of the case: _____

❑ Was manufacturered by technician(s) in our own laboratory.

❑ Was manufacturered by a third party provider located in _____
Contact information provided upon request.

Materials used in this portion of the case:

❑ _____ ❑ _____

❑ _____

❑ _____

Laboratory should write in products and brand names on the lines above. Identalloy sticker, Identceram sticker, manufacturer provided material content & lot number information, MSDS sheet or certificate of authenticity should be affixed below or attached as an addendum.

This disclosure form is provided as a sample by the Florida Dental Laboratory Association. It is recommended that laboratories reference Chapter 466, Section 466.021 of the Florida Statutes and sections of the Florida Administrative Code that govern dental laboratories before use.

A bill for an act

relating to health; regulating dental laboratories; proposing coding for new law as Minnesota Statutes, chapter 150B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[150B.01] SCOPE.**

To promote the health, safety, and welfare of citizens of this state, dental laboratories conducting business in this state must adhere to the regulatory procedures in sections 150B.02 to 150B.05.

Sec. 2. **[150B.02] DEFINITIONS.**

Subdivision 1. **Dental laboratory.** "Dental laboratory" means a corporation, partnership, or sole proprietor engaged in the manufacture or repair of dental prosthetic appliances on the prescription of and for a licensed dentist or the work authorized by another commercial dental laboratory.

Subd. 2. **Dental technician.** "Dental technician" has the meaning given in section 150A.10, subdivision 3.

Subd. 3. **Certified dental technician.** "Certified dental technician" means a dental technician who has met the standards set by the National Board for Certification in Dental Laboratory Technology or its equivalent as established by the Board of Dentistry.

Subd. 4. **Licensed dentist.** "Licensed dentist" has the meaning given in section 150A.01, subdivision 6.

Subd. 5. **Work order.** "Work order" means a written instrument by a licensed dentist directing a registered dental laboratory to manufacture or repair a dental prosthetic

appliance for an individual patient. The work order may be handwritten. It may be faxed or sent electronically using an electronic signature.

Subd. 6. **Work authorization.** "Work authorization" means a written instrument by a registered dental laboratory authorized by prescription by which a registered dental laboratory subcontracts all or part of the fabrication or repair of a dental prosthetic appliance authorized by prescription to another regulated dental laboratory. The work authorization may be handwritten. It may be faxed or sent electronically using an electronic signature.

Sec. 3. **[150B.03] REGISTRATION REQUIRED.**

Subdivision 1. **Registered dental laboratory.** (a) An individual dental laboratory operating, doing business, or intending to operate or do business in this state must register with the Board of Dentistry every two years and receive a unique registration number identifying the registered dental laboratory.

(b) In order to be regulated under this section, a dental laboratory must practice infectious disease control criteria as required by OSHA and the Centers for Disease Control and Prevention (CDC) of the United States Public Health Service.

(c) A dental laboratory in another state or country that provides service to a dentist licensed in this state is required to be registered with the state.

(d) Dental laboratories registered in this state are subject to inspections as directed by the Board of Dentistry.

Subd. 2. **Prescription required.** (a) The dental technological work must be based on a prescription issued by a licensed dentist. Prescriptions may be handwritten. They may be faxed or sent electronically using an electronic signature.

(b) The laboratory shall not diagnose or issue a treatment plan with a patient for or in place of the prescribing dentist.

Subd. 3. **Outside dental laboratory work.** A dentist practicing dentistry in this state must us a dental laboratory registered with the state of Minnesota and displaying a state registration number for any dental laboratory work that is performed outside of the office of a licensed dentist.

Subd. 4. **Material content notice.** (a) A dental laboratory shall disclose to the dentist, within seven days of written request, the complete material content of a prescribed restoration in a manner in which it can be easily included in the patient record. The material content notice must be included in the patient record.

(b) The laboratory shall return to the dentist who issued the prescription certification of:

(1) the country of origin where the dental technological work was performed, in whole or in part;

(2) the name, physical address, and registration number of the laboratory authorized to manufacture the dental device.

Sec. 4. **[150B.04] PROHIBITION AGAINST USE OF A NONREGISTERED DENTAL LABORATORY.**

A dentist licensed in this state must not have a dental prosthetic appliance manufactured in a dental laboratory that does not meet the regulatory requirements of this section.

Sec. 5. **[150B.05] CONTINUING EDUCATION REQUIREMENTS.**

(a) Each dental laboratory renewing registration on or after ..... shall be required to have documentation on file certifying that each of their dental technicians has completed eight hours of continuing education biennially. Programs of continuing education shall be programs of learning that contribute directly to the education of the dental technician and may include, but shall not be limited to, attendance at lectures, study clubs, college courses, or scientific sessions of conventions; and research.

(b) The aim of continuing education for dental technicians is to improve dental health care delivery to the public as such is impacted through the design, manufacture, and use of artificial human oral prosthetics and related restorative appliances.

(c) Continuing education courses shall address one or more of the following areas of professional development including, but not limited to:

(1) laboratory and technological subjects including, but not limited to, laboratory techniques and procedures, materials, and equipment; and

(2) subjects pertinent to oral health, infection control, and safety.

(d) Programs meeting the general requirements of continuing education as recognized by the National Association of Dental Laboratories (NADL). Other organizations, schools, or agencies may also be approved to develop and offer continuing education in accordance with specific criteria established by the Board of Dentistry.

(e) Any dental laboratory renewing a registration on or after ..... shall submit a sworn affidavit, on a form acceptable to the Board of Dentistry, attesting that each of their dental technicians has completed the continuing education required in this section according to the guidelines and provisions of this section and listing the date, location, sponsor, subject matter, and hours of completed continuing education courses. The dental laboratory shall retain in its records any receipts, vouchers, or certificates as

may be necessary to document completion of the continuing education courses for two registration cycles. With cause, the Board of Dentistry may request that the documentation be provided by the applicant. The Board of Dentistry may also request the documentation from applicants selected at random without cause.

Sec. 6. **[150B.06] IN-OFFICE DENTAL LABORATORIES.**

Sections 150B.01 to 150B.05 apply to a dental laboratory that is located within a dental practice and the dental technicians employed by that dental practice.

Missouri Dental Office Laboratory Prescription & Point of Origin Form

Provided through the Missouri Dental Association, this form complies with the guidelines prescribed by the Missouri Dental Board for approval of laboratory work orders.

Today's Date _____ **Try-In Date** _____ **Finish Date** _____

Patient Name _____ ❒ Male ❒ Female **Age** _____

Type of Restoration _____

Dentist Name _____ **Signature** _____

DDS/DMD License # _____ **Phone** _____

Dentist Address _____ **City/State/Zip** _____

Lab Name _____ **Phone** _____

Lab Address _____ **City/State/Zip** _____

TYPE OF RESTORATION

❒ Porcelain to High Noble
❒ Porcelain to Noble
❒ Porcelain to Base Metal (NP)
❒ Full Metal High Noble
❒ Full Metal Noble
❒ Full Metal Base (NP)

❒ Max Full Denture
❒ Mand Full Denture
❒ Max Partial Denture
❒ Mand Partial Denture

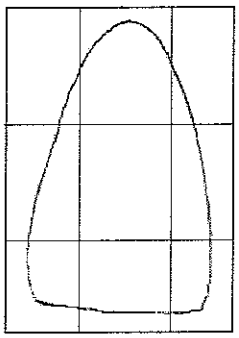
❒ All Ceramic (specify) _____

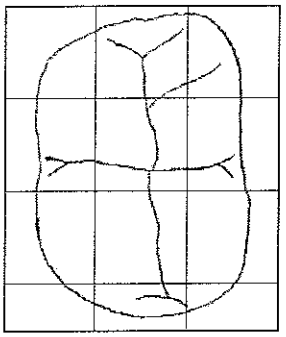
❒ All Composite (specify) _____

❒ Other (specify) _____

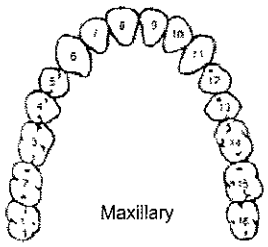
Pontic Design (circle)

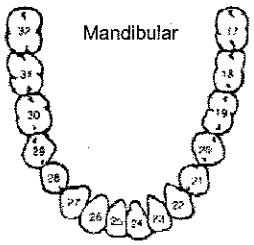
CUSTOM SHADING





PARTIAL





INSTRUCTIONS

_____

_____

_____

_____

_____

_____

_____

_____

DENTAL RESTORATION POINT OF ORIGINATION FORM

Attention Lab: Complete this section and return to doctor when case is received.

Doctor Name _____ **Patient Name** _____

This case will be: ❒ Fabricated by technicians at our own dental laboratory.

❒ Sent to another laboratory in the U.S. to be fabricated:
Lab Name _____ Location _____

❒ Sent to an overseas/foreign laboratory to be fabricated:
Lab Name _____ Location _____

Materials to be used in fabrication: _____

_____

_____

Place Identalloy Sticker Here

99415-3 : n : 03/24/2008 : JRC / tan LRS2008-1501R2

SYNOPSIS: This bill would require dentists to provide prior written disclosure to their patients if any fixed and/or removable dental prosthetic device or appliance, whether fabricated in part or completely, including, but not limited to, a complete or partial denture, veneer, inlay, onlay, crown, or bridge, is manufactured outside of the United States and to provide that failure to make such a disclosure would be grounds for disciplinary actions.

A BILL

TO BE ENTITLED

AN ACT

To amend Sections 34-9-6 and 34-9-18, Code of Alabama 1975, relating to the practice of dentistry; to require dentists to disclose to their patients if any fixed and/or removable dental prosthetic device or appliance, whether fabricated in part or completely, including, but not limited to, complete or partial denture, veneer, inlay, onlay, crown, or bridge, is manufactured outside of the United

States; and to provide that failure to meet the requirements of this act may be grounds for disciplinary actions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as The Alabama Consumer Dental Act of 2008.

Section 2. Sections 34-9-6 and 34-9-18, Code of Alabama 1975, are hereby amended to read as follows:

"§34-9-6.

"(a) Any person shall be deemed to be practicing dentistry who performs, or attempts or professes to perform, any dental operation or dental service of any kind, gratuitously or for a salary, fee, money or other remuneration paid, or to be paid, directly or indirectly, to himself, or to any person in his behalf, or to any agency which is a proprietor of a place where dental operations or dental services are performed; or

"(1) Who directly or indirectly, by any means or method, makes impression of the human tooth, teeth, jaws or adjacent tissue, or performs any phase of any operation incident to the replacement of a tooth or any part thereof; or

"(2) Supplies artificial substitutes for the natural teeth, and who furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, appliance or any other structure to be worn in the human mouth; or

"(3) Who places such appliance or structure in the human mouth, or adjusts or attempts or professes to adjust the same, or delivers the same to any person other than the dentist upon whose prescription the work was performed; or

"(4) Who professes to the public by any method to furnish, supply, construct, reproduce or repair any prosthetic denture, bridge, appliance or other structure to be worn in the human mouth, or who diagnoses, or professes to diagnose, prescribe for, professes to prescribe for, treats or professes to treat disease, pain, deformity, deficiency, injury or physical condition of the human teeth or jaws, or adjacent structure, or who extracts or attempts to extract human teeth, or remove tumors, abnormal growths or other lesions from the human gums, jaws and adjacent structures, or who operates for harelip or cleft palate; or who treats surgically or mechanically fractures of the human jaw; or who administers local or general anesthetics in the treatment of any dental lesion; or

"(5) Who repairs or fills cavities in the human teeth; or

"(6) Who uses a roentgen or X-ray machine for the purpose of taking dental X-rays or roentgenograms, or who gives, or professes to give, interpretations or readings of dental X-rays or roentgenograms, or X-ray or roentgen therapy; or

"(7) Who administers an anesthetic of any nature in connection with a dental operation; or

"(8) Who uses the words "dentist," "dental surgeon," "oral surgeon" or the letters "D.D.S.," "D.M.D." or any other words, letters, title or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe or operate for any disease, pain, deformity, deficiency, injury

or physical condition of the teeth or jaws or adjacent structures; or

"(9) Who states, or professes, or permits to be stated or professed by any means or method whatsoever that he can perform or will attempt to perform dental operations, or render a diagnosis connected therewith; or

"(10) Who performs any clinical operation included in the curricula of recognized dental colleges; provided, that members of the faculty, teachers, instructors, fellows, interns, residents, dental students and student dental hygienists who are employed by or who are taking courses or instructions at the University of Alabama School of Dentistry or such other dental colleges, hospitals or institutions in Alabama, as may be approved by the board; and provided, that the work of fellows, interns, residents, dental students and student dental hygienists is performed within the facilities of such dental colleges, hospitals and institutions under the supervision of an instructor and as an adjunct to his course of study or training, shall not be required to take examination or obtain a license certificate and renewal license certificate when all of such work, dental operations and activities are confined to his work in said college, hospital or other institution and said work is done without remuneration other than the regular salary or compensation paid by such colleges, hospitals or other institutions.

"(b)(1) The act adding this subsection and amending Section 34-9-18 shall be known as and may be cited as the Alabama Dental Consumer Protection Act of 2008.

"(2) For purposes of this subsection, the term dentist means a person who practices dentistry, as defined in subsection (a).

"(3) Prior to providing any dental service to any patient, each dentist practicing dentistry pursuant to this chapter in this state who provides to his or her patient any fixed and/or removable dental prosthetic device or appliance, whether fabricated in part or completely, including, but not limited to, a complete or partial denture, veneer, inlay, onlay, crown, or bridge, that is manufactured outside of the United States shall provide to the patient a written disclosure of the fact that the dental prosthetic device is not manufactured in the United States. Each such written disclosure shall also contain a statement that the patient understands that the dental prosthetic device is manufactured outside of the United States and that he or she either agrees to the usage of such device or disagrees and requests the device be manufactured in the United States by indicating his or her preference on the disclosure form and by signing the form as an acknowledgement of the disclosure.

"(4) The requirements of this subsection shall become operative on and after July 1, 2008.

"(5) The Board of Dental Examiners shall adopt rules pursuant to the Administrative Procedure Act to implement this subsection.

"§34-9-18.

"(a) The board may invoke disciplinary action as outlined in subsection (b) hereof whenever it shall be established to the satisfaction of the board, after hearing as

hereinafter provided, that any dentist or dental hygienist has been guilty of the following:

"(1) Fraud, deceit, or misrepresentation, whether knowingly or unknowingly, in obtaining any license, license certificate, annual registration certificate, money, or other thing of value.

"(2) Gross immorality.

"(3) Is a menace to the public health or to patients or others by reason of a disease.

"(4) Is an habitual user of intoxicants or drugs rendering him unfit for the practice of dentistry or dental hygiene.

"(5) Has been convicted for violation of federal or state narcotics or barbiturate laws.

"(6) Is guilty of gross negligence in the practice of dentistry or dental hygiene.

"(7) Is guilty of employing, allowing, or permitting any unlicensed person or persons to perform any work in his or her office which, under this chapter, can only be legally done by a person or persons holding a license to practice dentistry or dental hygiene.

"(8) Willfully or negligently violates the rules of the State Department of Health or of the board regarding sanitation.

"(9) Is guilty of division of fees, or agreeing to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or his legal representative, except the division of fees between dentists practicing in a

partnership and sharing professional fees, or in case of one licensed dentist employing another.

"(10) Is guilty of professional connection or association with or lending his name to anyone who is engaged in the illegal practice of dentistry.

"(11) Conviction in any court of competent jurisdiction of a felony or a misdemeanor involving moral turpitude.

"(12) a. A dental hygienist using or attempting to use in any manner whatsoever any prophylactic list, call list, records, reprints, or copies of same, or information gathered therefrom, of the names of patients whom the dental hygienist served in the office of a prior employer, unless the names appear upon the bona fide call or prophylactic list of her present employer and were caused to appear through the legitimate practice of dentistry as provided for in this chapter.

"b. A licensed dentist who aids or abets or encourages a dental hygienist employed by him or her to make use of a so-called prophylactic list or the calling by telephone or by the use of letters transmitted through the mails to solicit patronage from patients formerly served in the office of any dentist employing the hygienist or nurse.

"(13) Pertaining to licensed dentists only, the prescribing, administering or dispensing of any controlled substances enumerated in Schedules I through V contained in the Alabama Uniform Controlled Substances Act, Chapter 2 of Title 20, or any amendment or successor thereto, for any

person not under his or her treatment in the regular practice of his or her profession, or veteran's administration.

"(14) Irregularities in billing an insurance company or other third party payer for services rendered to a patient.

(15) Violating any rule or regulation adopted by the Board of Dental Examiners.

"(16) Has had his or her license to practice dentistry or dental hygiene from another state suspended or revoked based upon acts similar to those described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation shall be conclusive evidence thereof.

"(17) Violating any provision of this chapter.

"(18) A violation of subsection (b) of Section 34-9-6 requiring the prior written disclosure by dentists to their dental patients of the proposed use of any fixed and/or removable dental prosthetic device or appliance, whether fabricated in part or completely, that is manufactured outside the United States.

"For the purposes of this section irregularities in billing shall include: Reporting charges for the purpose of obtaining a total payment in excess of that usually received by the dentist for the services rendered; falsely reporting treatment dates for the purpose of obtaining payment; falsely reporting charges for services not rendered; falsely reporting services rendered for the purpose of obtaining payment; or failing to advise any third party payer that the copayment provisions of a contract have been abrogated by accepting the payment received from the third party payer as full payment.

"(b) When the board finds any dentist or dental hygienist guilty of any of the grounds set forth in subsection (a), it may enter an order imposing one or more of the following penalties:

"(1) Refuse to issue the dentist or dental hygienist license or license certificate provided for in this chapter.

"(2) Revoke the license of any dentist or dental hygienist.

"(3) Suspend the license of any dentist or dental hygienist.

"(4) Enter a censure.

"(5) Issue an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the dentist or dental hygienist.

"(6) Imposition of an administrative fine not to exceed one thousand dollars ($1,000) for each count or separate offense.

"(7) Imposition of restrictions on the scope of practice.

"(8) Imposition of peer review or professional education requirements.

"(9) Assessment of the costs of the disciplinary proceedings.

"(c) Failure to comply with any final order of the board, including, but not limited to, an order of censure or probation, is cause for suspension or revocation of a license.

"(d) No disciplinary action as outlined in subsection (b) or (c) hereof shall be invoked or entered except after hearing by the board as provided in this chapter,

and such order is subject to judicial review as provided by this chapter.

"No order of suspension or revocation provided in this section shall be made or entered except after hearing by the board as provided in this chapter, and the order shall be subject to judicial review as provided by this chapter.

"(e) The board may temporarily suspend a special purpose license to practice dentistry across state lines without a hearing on either of the following grounds:

"(1) The failure of the licensee to appear or produce records or materials as requested by the board.

"(2) The initiation of a disciplinary action against the licensee by any state or territorial licensing jurisdiction in which the licensee holds a license to practice dentistry.

"Notwithstanding any other provision of law, including the Alabama Administrative Procedure Act, the temporary suspension provided herein shall remain in effect until either the licensee has complied with the request of the board or the disciplinary action pending against the licensee has been terminated in favor of the licensee and the temporary suspension has been terminated by a written order of the board. A special purpose license to practice dentistry across state lines is subject to each of the grounds for disciplinary action provided in this section in accordance with the procedures of Section 34-9-24 and the Alabama Administrative Procedure Act.

"(f) Members of the Board of Dental Examiners, any agent, employee, consultant, or attorney for the board, the

members of any committee of dentists or dental hygienists impaneled by the board, shall be immune from suits for any conduct in the course of their official duties with respect to investigations or hearings; provided, that the persons act without malice and in good faith that such investigations or hearings are warranted by the facts, known to them after diligent effort to obtain the facts of the matter relative to the investigations or hearings.

"(g) Nothing in this chapter shall be interpreted to limit or restrict the authority of the board to discipline any dentist licensed to practice in this state who violates this chapter while engaging in the practice of dentistry within this or any other state."

Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

Draft - Unapproved

VIRGINIA BOARD OF DENTISTRY
AD HOC WORK GROUP ON ADVERTISING
MINUTES
August 20, 2010

TIME AND PLACE: The meeting of the Ad Hoc Work Group on Advertising of the Board of Dentistry was called to order at 10:11 a.m. on August 20, 2010 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Richmond, Virginia.

PRESIDING: Herbert R. Boyd III, D.D.S, Chair

MEMBERS PRESENT: William Bennett, D.D.S.
Terry Dickinson, D.D.S.
Michael Link, D.D.S.
Jeffrey Levin, D.D.S.

MEMBER ABSENT: Paul Supan, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director

QUORUM: All but one of the members of the Work Group was present.

ADVERTISING: Dr. Boyd welcomed the members and explained the workgroup will review the laws, regulations and guidance document on advertising to make suggestions for strengthening the Board's policies and practices.

Dr. Bennett opened the discussion, stating that it appears to him and the members of the Peninsula Dental Society (PDS) that the Board is not concerned about advertising and is not handling complaints in an appropriate manner. He spoke to his personal experiences with filing complaints and his dissatisfaction at the lack of any visible effort by the Board to hold dentists to the law and to educate them about the law. He explained that the PDS Ethics Committee was sending letters of concern about advertising in their area and that there is retaliation occurring. Discussion followed about the increasing competition for patients and a widely held belief that more dentists are pushing the envelope with deceptive advertising. The difficulties associated with a dentist reporting another dentist and with anonymous complaints were addressed.

The need for clear and convincing evidence that an ad is actually false, deceptive or misleading in order for the Board to take disciplinary action was explained and debated. The Board's management of advertising complaints was reviewed noting that:

- investigations are assigned to the D level, the lowest priority, along with all cases solely addressing business practices,

- the executive director is authorized to make probable cause decisions on advertising complaints, and
- confidential advisory letters and confidential consent agreements are frequently used to resolve a case.

Court decisions on commercial speech and the costs of litigating cases were also discussed.

Dr. Boyd then asked the group to focus on what the Board might do to improve the law and regulations on advertising. While reviewing the legal provisions, the discussion included repeated remarks that the Board should be educating licensees about the law and should publish examples of acceptable and unacceptable advertising. It was agreed by consensus that the statute and regulations were not an issue and that a guidance document targeted to dentists should be issued.

Discussion of Guidance Document 60-10 followed. Dr. Link said the Board should stop using confidential options for addressing violations and suggested that Board members should resume the review of these cases. Dr. Dickinson suggested increasing the sanctions. It was agreed by consensus to recommend that the Board amend the guidance document as follows:

- In the section "Making a Probable Cause Decision', item 1, rewrite the last sentence to read "All complaints must provide clear and convincing evidence that a violation occurred."
- In section B. Guidelines for Offering a Confidential Consent Agreement, item 1, limit the offer of a CCA to only a first offense so the sentence would read "The reviewer shall offer a CCA for a first advertising offense."
- In section C. Guidelines for Imposing Disciplinary Sanctions
  - items b.a and b.b, add a reprimand and assess the monetary penalty per violation found.
  - Item b.b increase the monetary penalty to $5,000, require continuing education in ethics and expand the provision to include subsequent offenses.

Discussion returned to anonymous complaints with Dr. Bennett encouraging the Board to look more closely at anonymous complaints to fully investigate the claims being made in advertising.

ADJOURNMENT: Dr. Boyd adjourned the meeting at 12:55 p.m.

Herbert R. Boyd III, Chair

Sandra K. Reen, Executive Director

Date

Date

PROPOSED REVISION

Virginia Board of Dentistry

Policy on Sanctioning for Failure to Comply with Advertising Guidelines

Excerpts of Applicable Law, Regulation and Guidance 18VAC60-20-180 et seq.

- The Board may sanction any licensee for advertisements that are false, deceptive or misleading; contain a claim of superiority or violate regulations, §54.1-2706(7).
- A general dentist who limits his practice shall advertise that he is a general dentist providing only certain services, 18VAC60-20-180.A.
- Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services, and products shall be deemed to be deceptive or misleading, 18VAC60-20-180.B
- Discount offers for dental services shall include the nondiscounted fee and the discounted fee, 18VAC60-20-180.C
- A prerecorded copy of all advertisements on radio or television shall be retained for six-months following the final appearance of the advertisement, 18VAC60-20-180.D
- Advertising of fees is limited to only routine dental services as set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature." 18VAC60-20-180.E
- The following practices shall constitute false, deceptive, or misleading advertising: §54.1-2706(7); 18VAC60-20-180.F
- Publishing an advertisement which contains a material misrepresentation or omission of facts, 18VAC60-20-180.F.1
- Publishing an advertisement that is likely to cause an ordinarily prudent person to be deceived, 18VAC60-20-180.F.2
- Publishing an advertisement which fails to include the information and disclaimers required by this section, 18VAC60-20-180.F.3
- Publishing an advertisement which contains a claim of professional superiority or uses any term to designate a dental specialty to which he is not entitled, 18VAC60-20-180.F.4
- A dentist not entitled to a specialty designation shall not represent that his practice is limited to providing services in a specialty area without disclosing that he is a general dentist, 18VAC60-20-180.F.5
- Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§54.1-2718 and 54.1-2720 of the Code of Virginia are complied with, 18VAC60-20-180.G
- Confidential Consent Agreements may be used to address advertising guidelines, Guidance Document 60-1.

Making a Probable Cause Decision

~~1.~~ In regards to allegations of false, deceptive and misleading advertisements, the reviewing Board member or staff (the reviewer) shall consider whether evidence exists that the source of the complaint was actually deceived, misled, etc. ~~Anonymous complaints and allegations that something could be a violation generally do not provide~~

PROPOSED REVISION

~~the required clear and convincing evidence that a violation occurred.~~ **All complaints must provide clear and convincing evidence that a violation occurred.**

2. In regards to allegations of claims of superiority and the failure to disclose required information, the reviewer shall not only consider the content of the advertisement but the evidence collected about the development and publication of the advertisement in deciding if there is clear and convincing evidence that the licensee is the responsible party and there is probable cause to believe a violation occurred.

A. Guidelines for sending an Advisory Letter
   1. The reviewer shall only request an Advisory Letter when there is not clear and convincing evidence to support a finding that a violation of law or regulation has occurred.
   2. Advisory letters may be used to close cases when the reviewer is concerned that the presenting information indicates that the licensee may be acting in ignorance of the applicable law and regulations.

B. Guidelines for Offering a Confidential Consent Agreement
   1. The reviewer shall offer a CCA for a first advertising offense ~~and may offer a CCA for subsequent advertising violations~~.
   2. In cases where there are findings of probable cause for violations in addition to advertising, the reviewer may offer a CCA consistent with Guidance Document 60-1.
   3. The offered CCA shall include a finding that a violation occurred and shall request the licensee's agreement to cease and desist advertising in violation of law and regulations.
   4. The offered CCA may also include a requirement for passage of the Virginia Dental Law Exam or completion of a continuing education course in ethics.

C. Guidelines for Imposing Disciplinary Sanctions
   1. The reviewer may offer a Pre-Hearing Consent Order (PHCO) or request an informal fact finding conference when probable cause is found that the licensee has subsequent advertising violations.
   2. The reviewer shall consider the following sanctioning guidelines:
      a. a $1,000 monetary penalty **per violation, a reprimand** and successful completion of the Virginia Dental Law Exam for a second offense.
      b. a ~~$2,000~~ **5,000** monetary penalty **per violation, a reprimand** and continuing education in ethics for a third **and subsequent** offenses.
   3. In cases where there are findings of probable cause for violations in addition to advertising the reviewer may offer a PHCO or request an informal fact finding conference.